IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4-2-2002

Coram:

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM

CRL.R.C.No.1431 of 1999

Vijayakumar Isac Gunaseelan .. Petitioner

Vs.

Rosalind Jothibai Vimala .. Respondent

Criminal Revision Case against the judgment dated 18.11.1999 in C.A.No.60 of 1997 on the file of the Principal Sessions Judge, Pondicherry.

! For Petitioner : Mr.R.Srinivas

^ For Respondent : Mr.G.R.Swaminathan

: ORDER

Vijayakumar Isac Gunaseelan, the petitioner herein, seeking to set aside the conviction under Section 494 I.P.C. and the sentence to undergo S.I. for 6 months and to pay a fine of Rs.20,000/-, has filed this revision.

2. Rosalind Jothibai Vimala, the respondent herein, filed a complaint against the petitioner alleging that she is the first wife of the petitioner and that the petitioner subsequently converted to Islam and got married one Majil Marifa, a muslim lady, and thereby, he committed the offence of bigamy.

3. After trial, the trial Court found the petitioner guilty for the offence under Section 494 I.P.C. and sentenced him to undergo S.I. for 6 months and to pay a fine of Rs.20,000/-. In the appeal filed by the petitioner before the appellate Court, the said conviction and sentence was confirmed. However, the appellate Court ordered payment of Rs.15,000/- as

compensation to the respondent/complainant out of the fine amount of Rs.20,000/-.

4. The petitioner and the respondent being Christians got married on 4.11.1987 at St.JohnÆs Church, Virdhunagar as per Christian religious rites and customs. Though they lived cordially in the initial period till 1991, thereafter, they used to have frequent quarrel. Therefore, in October, 1993, the petitioner chased the respondent from the marital home. Thereafter, lawyerÆs notices were exchanged between them. On 15.7.1994, the petitioner issued a publication in newspaper seeking for a bride for him. On noticing this, the respondent sent her relative to advise the petitioner not to marry again.

Without heeding to her request, the petitioner got converted to Islam and married one Manjil Marifa, a Muslim lady, on 29.6.1995 as per Muslim religious rites and customs. Hence, the complaint.

5. According to the respondent/complainant, the petitioner got converted to Islam for the purpose of second marriage and married a Muslim woman and thereby, he committed bigamy.

6. According to the petitioner/accused, he being a Muslim could marry four times and as such, he cannot be convicted for the offence under Section 494 I.P.C.

7. During trial, on behalf of the respondent/ complainant, P.Ws.1 to 3 were examined and Exs.P-1 to P-7 were marked. On behalf of the petitioner/accused, D.Ws.1 to 5 were examined and Exs.D-1 to D-4 were marked.

8. As indicated above, both the Courts below would hold that contracting the second marriage, while the first marriage was in subsistence, would amount to the offence under Section 494 I.P.C. and therefore, the petitioner was liable for conviction for the said offence.

9. Challenging the judgments of both the Courts below, the learned counsel for the petitioner/husband would stress very much on a single point, namely, the failure on the part of the respondent/complainant to prove that the second marriage was held according to the Muslim rites.

10. On the strength of the decisions in KANWAL RAM v. H.P. ADMINISTRATION (AIR 1966 S.C. 614) and SARLA MUDGAL v. UNION OF INDIA (AIR 1995 S.C. 1531), it is strenuously contended that mere admission by the accused that he contracted the second marriage is not enough and the proof of solemnisation of the second marriage in accordance with the essential religious rites applicable to the parties is a must for conviction for bigamy.

11. The learned counsel for the petitioner would also cite the decision in MANJIT KAUR v. STATE OF PUNJAB AND OTHERS (1994 (2) CRIMES 164) in which it is held that for proving the second marriage, the performance of essential ceremonies of Anand Karaj must be established.

12. He would also cite the decision in GHULAM KUBRA BIBI v. MOHAMMAD SHAFI (AIR 1940 PESHAWAR 2) which gives the details of the types of ceremonies being performed under the Mohammedan law.

13. Replying to the above contention, the learned counsel for the respondent would also strenuously contend that the second marriage was held in accordance with the Muslim rites and that the evidence of the defence witnesses also would prove that the second marriage was validly conducted and as such, Section 494 I.P.C. is attracted. He would cite number of authorities.

14. Instead of going into the factual aspects, which are reflected in the oral and documentary evidence, it would be better to straightaway go to the main question.

15. The specific contention urged by the learned counsel for the petitioner is that there is no proof to show that the petitioner married Manjil Marifa, a Muslim lady, as second wife in accordance with the Muslim rites.

16. On going through the evidence of both the prosecution witnesses and the defence witnesses, this contention does not deserve acceptance.

17. P.W.2 Abdul Kuthous, who is the Muthavali (Secretary) in Jammath Kalamaruthur, would specifically state that on the request of the petitioner/accused and on the basis of Ex.P-6 certificate to the effect that he got converted into Islam, he performed the marriage of the petitioner with Manjil Marifa, a Muslim lady.

18. It is also the evidence of P.W.2 that the said marriage contracted was registered in the marriage register of the Mosque. About this aspect of evidence, there is no challenge made in the crossexamination.

19. That apart, the father of the bride was examined as D.W.4. He would also state that the petitioner/accused approached him for marrying her daughter Manjil Marifa and after obtaining consent from him, the marriage was arranged in the

Mosque and the petitioner married his daughter as per Islamic rites and the marriage had been registered in the marriage register of the Mosque. Under those circumstances, it cannot be contended that the second marriage was not proved.

20. In Mohammedan law, the marriage is a contract having as its object the procreation and legalisation of children. It is settled law that the marriage must be established by direct evidence. If direct proof is not possible it may established by indirect proof (i.e.,) by presumption drawn from certain facts.

21. The marriage contracts under Mohammedan Law are often reduced to writing in the form of a 'Kabinnama', a marriage register. About this register, both P.W.2 and P.W.4 have spoken to. In the said fact situation, it cannot be contended that the performance of the ceremonies have not been established.

22. As laid down in ABDUL RAHIM v. JULAIGA BEEVI (2001 (3) C.T.C. 71 0), the legal essentials of a valid Mohammedan marriage are that there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other. In the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Mohammedans. The proposal and acceptance must both be expressed at one meeting.

23. In this case, the evidence of P.W.2 and P.W.4 would clearly prove that the said legal essentials have been established. Therefore, I do not see any infirmity in the factual findings given by both the Courts below.

24. In result, the Criminal Revision Case is dismissed confirming the conviction and the sentence imposed upon the petitioner by the Court below. The trial Court is directed to secure the custody of the petitioner/accused in order to undergo the remaining period of sentence.

4-2-2002
Index: Yes/No
dpp
Office to note:-
Send the order copy to
the trial Court forthwith.
dpp

To
1. The Principal Sessions Judge, Pondicherry.
2. The Chief Judicial Magistrate, Pondicherry.

3. The Public Prosecutor (Pondicherry), High Court,
Chennai.
4. The Public Prosecutor, High Court, Chennai.

M. KARPAGAVINAYAGAM, J.

Pre-Delivery Order in
Crl.R.C. No.1431 of 1999.

4-2-2002